

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ENRIQUE GONZALEZ-GALEANA (4),

Defendant.

No. No. CR-13-6036-EFS-4  
No. 4:CV-14-5070-EFS

**ORDER DENYING DEFENDANT'S MOTION  
TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE**

Before the Court, without oral argument, is Defendant Enrique Gonzalez-Galeana Motion to Vacate Sentence Pursuant to 28 U.S.C. § 2255, ECF No. 237. After reviewing the petition and record in this matter the Court is fully informed and denies the petition. The reasons for the Court's Order are set forth below.

**I. BACKGROUND**

On July 18, 2013, Defendant was charged as one of four defendants with conspiracy to distribute methamphetamine in violation of 21 U.S.C. § 846. On December 18, 2014 Defendant, pursuant to a signed interdependent plea agreement, ECF No. 174, pled guilty to Count One of the Information Superseding Indictment, ECF No. 173, charging Defendant with misprision of a felony in violation of 18 U.S.C. § 4. The Court accepted the plea, finding Defendant's plea to be knowing, intelligent, and voluntary. ECF No. 175. On April 1, 2014, the Court accepted the parties' plea agreement, ECF No. 222, and

1 Defendant was sentenced consistent with the parties' agreement to 36  
2 months imprisonment and one year of supervised release. ECF No. 224.  
3 Defendant was permitted to self-surrender, and on May 14, 2014, the  
4 Court delayed Defendant's report date to no earlier than May 26, 2014.  
5 On June 18, 2014, over two months after the April 2, 2014 Judgment was  
6 entered, Defendant filed a Notice of Appeal, ECF No. 238, and the  
7 instant Motion to Vacate Sentence, ECF No. 237.<sup>1</sup>

8 The Plea Agreement, ECF No. 174, entered into by the parties  
9 acknowledged that Defendant's plea was part of a "package plea"  
10 between Defendant and co-Defendants Alex Gonzalez, Julio Cesar  
11 Gonzalez, and Juan Manuel Ledesma. The parties agreed that "if  
12 Defendant . . . subsequently seeks to withdraw from the guilty plea,  
13 then the United States shall withdraw from all Plea Agreements and  
14 will seek to reinstate the Superseding Indictment against all  
15 parties." ECF No. 174 at 2. Additionally, Defendant expressly waived

16 his right to file any post-conviction motion attacking his  
17 conviction and sentence, including a motion pursuant to 28  
18 U.S.C. § 2255, except one based upon ineffective assistance  
19 of counsel based on information not now known by Defendant  
and which, in the exercise of due diligence, could not be  
known by Defendant by the time the Court imposes the  
sentence.

20 ECF No. 174 at 7. The agreement further contemplated that if  
21 Defendant "files a notice of appeal [or] habeas petition . . . the  
22 Defendant agrees that this case shall, upon motion of the government,  
23 be remanded to the district court to determine whether Defendant is in  
24 breach of this agreement; and, if so, to permit the government to  
25 withdraw from the Plea Agreement." ECF No. 174 at 7.

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26 <sup>1</sup> See Fed R. App. P. 4(b)(1)(A)(i) (requiring a notice of appeal be filed  
within ten days of entry of the judgment in a criminal case).

1 To date, the United States has not moved to determine whether  
2 Defendant is in breach of the agreement, to remand the appeal, nor to  
3 withdraw from the plea agreements and reinstitute charges against all  
4 four named defendants in the Superseding Indictment.<sup>2</sup>

5 **II. MOTION TO VACATE SENTENCE**

6 **A. Legal Standard - 28 U.S.C. § 2255**

7 A § 2255 motion may seek relief on the grounds that 1) the  
8 judgment was rendered without jurisdiction, 2) the imposed sentence  
9 was not authorized by law, or 3) the judgment is vulnerable to  
10 collateral attack because the petitioner's constitutional rights were  
11 denied or infringed. 28 U.S.C. § 2255(a) & (b). Pursuant to Rule  
12 4(b) of the Rules Governing Section 2255 Proceedings for the United  
13 States District Courts, the Court must examine a § 2255 motion and the  
14 record to determine whether summary dismissal is warranted. Rule  
15 4(b), 28 U.S.C. foll. § 2255. "If it plainly appears from the face of  
16 the motion and any annexed exhibits and the prior proceedings in the  
17 case that the movant is not entitled to relief in the district court,  
18 the judge shall make an order for its summary dismissal." *Id.*; see  
19 also *Baumann v. United States*, 692 F.2d 565, 571 (9th Cir. 1982).

20 **B. Discussion**

21 Defendant challenges his sentence and asserts that his plea of  
22 guilty was "unlawfully induced, or not made voluntarily, or made  
23 without an understanding of the nature of the charge and the

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24 <sup>2</sup> As the agreement states that it is upon the filing of "a notice of appeal  
25 [or] a habeas petition" that the right of the United States to withdraw  
26 vests, the Court need not await the decision by the United States to move to  
withdraw from the plea agreement before ruling on the habeas petition, nor  
does the entry of this Order preclude the United States from later exercising  
its contractual rights under the agreement.

1 consequences of the plea [sic]." ECF No. 237 at 1. This is based upon  
2 Defendant's four separate allegations of ineffective assistance of  
3 counsel:

4 1. Petitioner's trial counsel was ineffective by failing to  
5 properly advise of his constitutional rights,

6 2. The defense counsel was ineffective because there was not a  
7 factual basis for a guilty plea as the evidence was  
8 insufficient to sustain a conviction under the facts of the  
9 case,

10 3. Ineffective assistance of trial counsel in not providing  
11 petitioner an opportunity to allocute, and

12 4. Defense counsel rendered ineffective assistance of counsel  
13 by failing to file a timely notice of appeal.

14 In *Strickland v. Washington*, 466 U.S. 668, 687 (1984), the  
15 Supreme Court established the requirements for an ineffective  
16 assistance of counsel claim:

17 First, the defendant must show that counsel's performance  
18 was deficient. This requires showing that counsel made  
19 errors so serious that counsel was not functioning as the  
20 "counsel" guaranteed the defendant by the Sixth Amendment.  
21 Second, the defendant must show that the deficient  
22 performance prejudiced the defense. This requires showing  
23 that counsel's errors were so serious as to deprive the  
24 defendant of a fair trial, a trial whose result is  
25 reliable. Unless a defendant makes both showings, it  
26 cannot be said that the conviction or death sentence  
resulted from a breakdown in the adversary process that  
renders the result unreliable.

24 "Judicial scrutiny of counsel's performance must be highly  
25 deferential." *Id.* at 689. In order to show that his attorney's  
26 performance was deficient, a defendant must show that "counsel's

1 representation fell below an objective standard of reasonableness."  
2 *Id.* at 688. In order to satisfy the requirement of prejudice, "[t]he  
3 defendant must show that there is a reasonable probability that, but  
4 for counsel's unprofessional errors, the result of the proceeding  
5 would have been different." *Id.* at 694. A reviewing court must  
6 ensure that "every effort is made to eliminate the distorting effects  
7 of hindsight, to reconstruct the circumstances of counsel's challenged  
8 conduct, and to evaluate the conduct from counsel's perspective at the  
9 time." *Id.* at 689. In the case of a guilty plea, a defendant must  
10 show both that his counsel's representation fell below an objective  
11 standard of reasonableness and that a reasonable probability exists  
12 that, but for counsel's unprofessional errors, he would not have  
13 pleaded guilty. *Hill v. Lockhart*, 474 U.S. 52, 57-59 (1985).

14 Having reviewed the petition and record in this matter, the  
15 Court finds no basis to conclude that counsel provided ineffective  
16 assistance of counsel. First, Defendant was advised by the Court of  
17 his constitutional rights and acknowledged his understanding of those  
18 rights, at the December 18, 2013 hearing. ECF No. 170. Second, on  
19 December 18, 2013, Defendant, under oath, stated that he agreed there  
20 was a sufficient factual basis to find him guilty of the charge of  
21 misprision of a felony, admitted the facts constituting the essential  
22 elements of the crime, and stated he was in fact guilty. Third, at  
23 the April 1, 2014 sentencing, the Court provided Defendant an  
24 opportunity to address the Court, which he exercised expressing his  
25 apologies to the Court and the prosecutor and asked for forgiveness  
26 and clemency. ECF No. 221. Finally, in the Plea Agreement Defendant

1 explicitly waived his right of appeal, ECF No. 174 at 7, and therefore  
2 there could be no ineffective assistance for failing to file a notice  
3 of appeal, as his counsel could not have, in good-faith, filed such a  
4 notice. In conclusion, each of Defendant's claims is strictly  
5 contradicted by his own sworn testimony and statements before this  
6 Court.

7 Accordingly, based upon the petition and the prior proceedings  
8 in this case, Defendant is not entitled to relief and his petition is  
9 summarily denied. Rule 4(b), 28 U.S.C. foll. § 2255; see also *Baumann*  
10 *v. United States*, 692 F.2d 565, 571 (9th Cir. 1982).

11 **C. Certificate of Appealability**

12 Pursuant to 28 U.S.C. § 2253, the Court must determine whether  
13 to grant a certificate of appealability as to any of the claims  
14 presented in the Petition. 28 U.S.C. § 2253 provides, in part, as  
15 follows:

16 (c) (1) Unless a circuit justice or judge issues a  
17 certificate of appealability, an appeal may not be taken to  
the court of appeals from . . . (B) the final order in a  
proceeding under section 2255.

18 (2) A certificate of appealability may issue under  
19 paragraph (1) only if the applicant has made a substantial  
showing of the denial of a constitutional right.

20 In order to make "substantial showing" of the denial of a  
21 constitutional right, as required under 28 U.S.C. § 2255(c)(2), a  
22 habeas prisoner must demonstrate "that reasonable jurists could debate  
23 whether . . . the petition should have been resolved in a different  
24 manner or that the issue presented were 'adequate to deserve  
25 encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473  
26 (2000) (*quoting Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4 (1983)).

1 Where a district court has rejected the constitutional claims on the  
2 merits, the petitioner must demonstrate only that reasonable jurists  
3 would find the district court's assessment of the constitutional  
4 claims debatable or wrong. *Slack*, 529 U.S. at 484.

5 For the reasons stated above, the Court concludes that  
6 Petitioner has failed to make a substantial showing of the denial of a  
7 constitutional right and there is no reasonable basis upon which to  
8 debate this Court's rulings. Accordingly, the Court declines to issue  
9 a certificate of appealability.

10 **III. CONCLUSION**

11 Accordingly, **IT IS HEREBY ORDERED:**

- 12 1. Defendant's Motion to Vacate, Set Aside, or Correct  
13 Sentence by a Person in Federal Custody, **ECF No. 237**, is  
14 **DENIED**.
- 15 2. The Court declines to issue a certificate of appealability,  
16 and certifies any appeal of this dismissal would not be  
17 taken in good faith.
- 18 3. The criminal file and its civil companion case shall be  
19 **closed**.

20 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
21 Order and provide copies to all counsel.

22 **DATED** this 2<sup>nd</sup> day of July 2014.

23 s/Edward F. Shea

24 EDWARD F. SHEA

25 Senior United States District Judge